



政府總部
民政事務局

香港灣仔
軒尼詩道一百三十號
修頓中心三十一樓

GOVERNMENT SECRETARIAT
HOME AFFAIRS BUREAU

31ST FLOOR, SOUTHERN CENTRE,
130 HENNESSY ROAD,
WAN CHAI,
HONG KONG.

Ref.: S/F(4) to HAB/II/4/7

Tel No.: 2835 1485
Fax No.: 2591 6002

16 July 2008

Mrs Percy Ma
Clerk to the Panel on Administration
of Justice and Legal Services
Legislative Council Building
8 Jackson Road
Hong Kong

By Fax: 2509 9055

Dear Mrs Ma,

**Panel on Administration of Justice and Legal Services
Enforcement of Judgment in Civil Cases**

As per Panel's request, after consulting the Immigration Department, the Housing Department and the Transport Department, we have earlier provided a written confirmation to the Law Society that, where a maintenance payee requires a maintenance payer's address in order to institute legal proceedings against him/her for failing to pay maintenance, the relevant departments will provide the address, from their records, if available. A copy of our letter to the Law Society dated 19 May 2008 is enclosed for your information.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Leonie Lee'.

(Miss Leonie Lee)
for Secretary for Home Affairs

c.c. D of Adm (Attn: Ms Gladys Leung) 2537 4718

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Our Ref.: S/F(4) in HAB/II/4/7

Tel: 2835 1239

Fax: 2591 6002

19 May 2008

Ms Joyce Wong
The Law Society of Hong Kong
3/F Wing On House
71 Des Voeux Road
Central
Hong Kong

Dear Ms Wong,

Enforcement of Maintenance Orders

In your letter of 14 March 2008, you sought an update regarding Government departments supplying the addresses defaulting maintenance payers, upon request, to facilitate the enforcement of maintenance orders. We have sent interim replies to you on 3 April 2008 and 8 May 2008. My apologies for the delay in replying, as we have taken some time to consolidate departments' views and advice.

The Immigration, Housing and Transport Departments (the Departments) have confirmed that where a maintenance payee (or legal representative) requires a maintenance payer's address in order to institute legal proceedings against him/her for failing to pay maintenance, the Departments will provide the address, from their records, if available.

To assist the Departments in this regard, the requestor will have to provide them with sufficient information, including why an exemption under section 58(2) of the Personal Data (Privacy) Ordinance applies.

After consulting the Departments, I enclose a proforma request letter at *Annex A* together with contact addresses for the Departments at *Annex B* which you are asked to bring to your members' attention.

It is an offence for a maintenance payer to fail to notify the maintenance payee of any change of address (see s.28A of the Matrimonial Proceedings and Property Ordinance, Cap 192 and s.10 of Separation and Maintenance Orders Ordinance, Cap. 16). The Police advise that in such a case, the maintenance payee or the parties acting for the maintenance payee may report the offence to the police station nearest to the maintenance payer's last known address.

Before making a report to the Police, the maintenance payee should preferably first check with the Director of Immigration, Director of Housing &/or Commissioner for Transport for the maintenance payer's current address using the proforma request letter at *Annex A*.

May I request your assistance in circulating the above information to your members, please. If you have any comment or question, please do not hesitate to get in touch with me any time.

Yours sincerely,



(Miss Maggie Kwong)
for Secretary for Home Affairs

c.c.

Secretary for Justice

(Attn: Ms A Cabrelli)

Commissioner for Police

(Attn: Mr Charles Alison)

Commissioner for Transport

(Attn: Mr Kelvin Leung)

Director of Housing

(Attn: Ms Beatrice Chang)

Director of Immigration

(Attn: Ms Ellis Chan)

Annex A

Director of Immigration (Attn: Records Centre)
Director of Housing (Attn: Complaints and Enquiries Section)
Commissioner for Transport (Attn: Vehicle Inspection and Records
Unit, Licensing Section)

Dear Sir,

We act on behalf of Ms. A (Hong Kong Identity Card No.) in FCMC No. ___ of ___ in enforcing a maintenance order. In this regard, we write to request that you check your records and provide us with the last known address of the following person:

Name: (English) (Chinese)

Sex: Date of birth or age:

Identity card No.

Previous address:

2. Ms. A was married to Mr. B. As a result of separation/divorce, the court ordered him to pay maintenance. A copy of the relevant maintenance order is enclosed herewith.
3. He has not paid maintenance as specified in the maintenance order. Ms. A intends to institute legal proceedings to enforce the maintenance order. Extensive efforts to locate him have failed. Therefore, legal proceedings cannot be instituted at this stage.
4. Will you please check your records and advise us of the last known address for Mr. B? We consider that the exemption from data protection principle 3 provided by section 58(2) of the Personal Data (Privacy) Ordinance ("The Ordinance"), as read with section 58(1)(d), to be relevant as the data is to be used to remedy Mr. B's unlawful or seriously improper conduct or dishonesty.

5. In a judgement handed down by Deputy Judge Saunders (as he then was) in *Man Hok Pui v Man Leung Yuk Sin*, D.J. Suit No. 1425 of 1988, he said at page 10 of the said judgement that “I accordingly find that where a person is in breach of a Court order and another person, being entitled to the benefit of that order, wishes to enforce the order, then, by virtue of the provisions of section 58(2) of the Ordinance, a data user is exempted from the provisions of the data protection principle 3, and may supply the information upon appropriate request” .

6. In *Tse Lai Yin Lily v Incorporated Owners of Albert House* [1999] 1 HKC 386, the Hon. Mr. Justice Suffiad said at page 393 of the judgement that “unlawful or seriously improper conduct” extended beyond criminal conduct to include civil wrongs and that the “most natural meaning that can be given to the word “unlawful” is that it normally describes something which is contrary to some law or enactment or is done without lawful justification or excuse”.

7. We consider Mr. B’s failure to pay maintenance in accordance with the court’s order to be unlawful, as there is no lawful justification or excuse for such failure.

8. As enforcing the maintenance order against Mr. B amounts to remedying his unlawful conduct, you are asked to apply the exemption provided by section 58(2) of the Ordinance and disclose the last known address of Mr. B to us.

9. We undertake to use the information provided by you solely for enforcing the mentioned maintenance order.

Yours faithfully,

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Requests for Maintenance Payers' Address
Contact Address of the Departments

Immigration Department:

Director of Immigration (Attn: Records Centre)
Immigration Department
Immigration Tower
7 Gloucester Road
Wanchai, Hong Kong

Housing Department:

Director of Housing (Attn: Complaints and Enquiries Section)
4/F, Block One, Housing Authority Headquarters
33 Fat Kwong Street,
Homantin, Kowloon

Transport Department:

Commissioner for Transport
(Attn: Vehicle Inspection and Records Unit, Licensing Section)
3/F United Centre
95 Queensway, Hong Kong